
TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #10-66

DEVELOPMENT OF NEW RULES CONCERNING UNDERGROUND STORAGE TANK OPERATOR TRAINING REQUIREMENTS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules at [329 IAC 9-9](#) concerning training of operators who operate and maintain regulated underground storage tank (UST) systems. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: [329 IAC 9-9](#).

AUTHORITY: [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

On August 8, 2007, the United States Environmental Protection Agency (EPA) published in the Federal Register (72 FR 44523) operator training grant guidelines for states that receive UST funds from EPA.

EPA developed these grant guidelines as required by the operator training provision in Section 9010 of Subtitle I of the Solid Waste Disposal Act (SWDA), 42 U.S.C. 6901 et seq., enacted by the Underground Storage Compliance Act part of the Energy Policy Act of 2005. Section 1524 of the Energy Policy Act of 2005 amends Subtitle I of the SWDA of 1965 by adding Section 9010, Operator Training. Section 9010(a) and Section 9010(b) of Subtitle I of the SWDA require EPA to publish guidelines that establish training requirements for three distinct classes of UST system operators and require states to develop state-specific training requirements consistent with the guidelines. The EPA training grant guidelines describe the minimum requirements states must meet to comply with the operator training provision contained in the Energy Policy Act of 2005, leaving states the flexibility to tailor their program according to their needs.

The original date for states to develop training requirements consistent with EPA's guidelines was August 8, 2009. The deadline to ensure that all three classes of operators are trained according to the state training requirements is August 8, 2012.

[IC 13-23-1-1](#) directs IDEM to establish and operate a UST release detection, prevention, and correction program. The operator training program required under the federal regulations is a part of the prevention portion of the program. In addition, [IC 13-19-3-1](#) requires the solid waste management board to adopt rules necessary to implement the Resource Conservation Recovery Act (RCRA), which is the amended Solid Waste Disposal Act.

To comply with the federal mandate, IDEM is proposing new rules for operator training. These rules will establish three distinct classes of UST operators identified as Class A, Class B, and Class C. The rules will describe how Indiana will train each class of operator in certain subjects and develop a training schedule for the operators. The training requirements will be developed in cooperation with UST owners and operators. The rules will also take into consideration training programs previously implemented by owners and operators. This rule will apply to owners and operators of USTs; therefore, all the training requirements will be appropriately communicated to UST owners and operators. Once Indiana has met the requirements for operator training, it must submit to EPA a certification indicating that the state meets the requirements in the EPA guidelines.

Alternatives to Be Considered Within the Rulemaking**Alternative 1. Developing state rules for UST operator training requirements based on federal guidelines.**

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No; however, IDEM will develop rules based on EPA's guidelines as published at 72 FR 44523.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law. EPA published the operator training guidelines for state UST programs on August 8, 2007, at 72 FR 44523. EPA developed the guidelines as required by the operator training provision in Section 9010 of Subtitle I of the SWDA, enacted by the Underground Storage Compliance Act part of the Energy Policy Act of 2005. Section 1524 of the Energy Policy Act of 2005, amends Subtitle I of the SWDA of 1965, by adding Section 9010, Operator Training. Section 9010(a) and Section 9010(b) of Subtitle I of the SWDA require EPA to publish guidelines that establish training requirements for three distinct classes of UST system operators and require states to develop state-specific training requirements consistent with the guidelines.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Incorporating federal guidelines by reference into state rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? This alternative is not possible since EPA has developed general guidelines only and not rules or prescriptive requirements for states. EPA has left the task of developing state-specific training requirements up to the states.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 3. Not adding UST operator requirements into state rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.
- It is not in Indiana's best interest to not implement UST operator training requirements based on federal guidelines since IDEM receives federal grants for the Indiana UST program. Indiana has to comply with the UST provisions of the Energy Policy Act, or be subject to action by EPA under 40 CFR 31.43 for failing to comply, including a loss of federal funds.

Applicable Federal Law

Section 1524 of the Energy Policy Act of 2005 amends Subtitle I of the SWDA of 1965 by adding Section 9010, Operator Training. Section 9010(a) and Section 9010(b) of Subtitle I of the SWDA require EPA to publish guidelines that establish training requirements for three distinct classes of UST system operators and require states to develop state-specific training requirements consistent with the guidelines.

The EPA training grant guidelines describe the minimum requirements states must meet to comply with Section 9010, 42 U.S.C. 6901 et seq., leaving states the flexibility to tailor their specific program according to their needs. Therefore, states may choose to be more stringent than these minimum requirements.

Under the guidelines, a facility with a UST system or group of UST systems at must meet, at a minimum, the following requirements:

- Must have three classes of operators: a Class A, Class B, and Class C operator designated and trained according to rules implemented under EPA's guidelines. A Class A operator has the primary responsibility to operate and maintain the UST system. A Class B operator implements applicable UST requirements and standards. A Class C operator is an employee and is generally the first line of response to emergency conditions.
- Procedures must be in place to identify individuals who are required to meet the operator training requirements.
- The rules must be developed in cooperation with UST owners and operators.
- The rules must take into consideration training programs implemented by UST owners and operators.
- The rules must be communicated to UST owners and operators.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. Since this rulemaking addresses a requirement imposed under federal law, there is no additional fiscal impact beyond the impact already imposed under federal law. At this time, there is no federal fiscal information available from EPA on potential costs. Indiana has approximately 4,000 UST facilities. Operators overlap in these facilities (and can overlap in their training), which might reduce the number of operators to approximately 2,000 who might require training. The fiscal impact on entities will be clearer once IDEM decides upon whether it will only provide certification, with the entities being responsible for their own training, or upon some other route. Technical staff estimate the training costs for Indiana operators to be in the range of \$200,000 and \$400,000.

Potential Fiscal Impact of Alternative 2. This is not an option to be considered since EPA has merely provided guidelines and not rules or prescriptive requirements for states.

Potential Fiscal Impact of Alternative 3. This option would result in the loss of federal funding for Indiana. Indiana is currently receiving \$500,000 per year for the UST grant inspections, and \$1,616,000 per year for the Leaking Underground Storage Tank grant from EPA.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:
Alison Surface
IDEM Compliance and Technical Assistance Program – OPPTA
MC 60-04 IGCS W041

100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 451-6027
bbaughn@idem.in.gov

Public Participation and Workgroup Information

An external workgroup will be established to discuss issues involved in this rulemaking. The workgroup will be made up of IDEM staff and a cross-section of stakeholders. Once the workgroup is established, a schedule of the workgroup meetings will be posted on the IDEM website. If you are interested in attending the workgroup meetings, please contact Kiran Verma, Rules Development Branch, Office of Legal Counsel at (317) 232-8899 or (800) 451-6027 (in Indiana), or kverma@idem.in.gov. Please provide your name, phone number and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

LSA Doc. #10-66 (UST Operator Training program)
Janet Pittman
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Ave.
MC 65-46
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the IDEM receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5517, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch, Office of Legal Counsel at (317) 233-5517.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by March 19, 2010.

Additional information regarding this action may be obtained from Kiran Verma, Rules Development Branch, Office of Legal Counsel, (317) 232-8899 or (800) 451-6027 (in Indiana).

Nancy King, Chief
Office of Legal Counsel
Rules Development Branch

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